REMARKS

I. INTRODUCTION

The present Amendment D is submitted in response to the Office Action dated September 3, 2004, which states, "this Action is Final".

Initially, the Examiner's attention is kindly directed to the **Conclusion** of the Final Rejection Action appearing at page 5, in the second paragraph, the Examiner referred to a shortened statutory period for response of three months being set.

In the next sentence, same page, the Examiner states,

"...In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action...."

The present Amendment is being faxed on November 3, 2004, to the U.S.P.T.O. at fax number (703)872-9306 and mailed by U. S. Mail thereby complying with the 2 month due date of November 3, 2004. This compliance with the 2 month due date of November 3, 2004 entitles the Applicant to a response to the present Amendment D.

At this stage it should also be noted that it is the understanding of Applicant's undersigned attorney that the primary Examiner assigned to this case, Mr. John Vrablik, will assume retired status effective November 3, 2004 and a new Examiner has been assigned to take over prosecution of this case.

It should further be stated that Applicant's attorney has made a bona fide effort to carefully study the rejections and the art of record and has in good faith amended the Claims in order that they define a patentable distinction as compared to the art cited and additionally to satisfy the formal rejections relying upon 35 U.S.C. § 112.

ARGUMENT

Applicant and his counsel wish to express their appreciation for the allowance of claims 32-35, as noted on page 4, of the Office Action.

Further, claims 12 and 23-25 have been indicated as allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph of the Office Action. [This has been done.]

As to claims 14, 21, 22, 26 and 28 the Examiner indicates that these would be allowed, if rewritten to overcome the 35 U.S.C. 112 rejection.

Reconsideration of the grounds of objections/rejections as expressed in the Office Action of September 3, 2004 is earnestly requested, in view of the within:

1) Amendments to the claims,

2) REMARKS, beginning on page 11 hereinbefore,

3) the attached EXHIBIT 1, consisting of clean copies of paragraphs [0061] and [0064].

The fees are considered to be all paid up and therefore no fees are due as a result of the present Amendment.

II. The Rejection on 35 U.S.C. § 112

Applicant's Attorney would like to summarize the Examiner's grounds of rejection as set forth below.

First, the Examiner rejects claims 12-17, 21-28 and 30 as unpatentable under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As specific examples, the Examiner rejects claims 12 and 13 as being indefinite for claiming a cavity which is merely an unfilled space. The Examiner suggests that the claim should recite some structure defining the cavity, e.g. means forming a cavity.

Next, the Examiner rejects dependent claims 15-17 which are objected to as not referring back to and further limiting a preceding claim. See 37 CFR 1.75(c).

Next, claim 22 is objected to as indefinite and functional because it has no structure recited to support the statement that all gear housing and cover members are surrounded by the pump's generated pressure force.

Finally, the Examiner rejects claim 28 as reciting, "said cavity means" in line 6 on the ground of insufficient antecedent basis.

These rejections will be discussed hereinafter with specific reference to the claims and changes in the dependency so that the dependent claim will always recite its dependency as being earlier.

III. Response to Rejections on 35 U.S.C. § 112

The following remarks address the objections on 35 U.S.C. § 112, beginning at page 2, of the Office Action.

The claims have been amended as set forth below to meet the Examiner's rejections and objections.

Applicant would initially like to address claims 12 and 13 since it is emphatically controverted that the Examiner's rejection seems inappropriate given the amendments to claim 12 and 13

First, Applicant sees no valid objection to the language "adapted to be mounted in a cavity". The Examiner's suggestion calling for "means forming a cavity"; would seem totally inappropriate as an element of hydraulic gear pump comprising a number of parts. Certainly, one may claim a bridge adapted to span a river or railroad tracks or a highway without requiring 'means' for forming a river or a railroad track or a highway.

Claim 12 is deemed fully compliant with 35 U.S.C. § 112.

Further, as to claim 13 the same above remarks appropriately apply to that objection as well.

Claim 14 has been amended by identifying the gear pump by the inclusion of the words, "hydraulic gear". Claim 14 has also been amended by inserting the words, "reason of" in line 4 thereof, which more specifically characterizes the generated pressure as occurring by reason of rotation of said pump.

Claim 15 has been amended to change its dependency from claim 22 to claim 12. Claim 15 additionally characterizes dowel pins as being appropriately spaced and secured.

Referring now to claim 16, it has been amended by changing its dependency from claim 15 to claim 12. Further claim 16 has been converted to the combination of a pump, a linear motor and certain means as defined therein.

Claim 17 has been amended by changing its dependency from claim 22 to claim 16 thereby claiming a combination which addresses the 35 U.S.C. 1.75 (c) rejection and further the term "hollow body" has been changed to "a cylinder" and also includes other limitations as recited in (2).

[As to claim 18, Applicant is proceeding under the interpretation that it is rejected upon art rather than 35 U.S.C. § 112. Claim 18 will be addressed in Section V.]

Claim 21 has been amended by changing its dependency from claim 14 to claim 15 and by characterizing the dowel pin means "as appropriately spaced and secured" and also calling for "corresponding means for receiving said dowel pins".

Claim 22 is dependent on claim 11; and has been additionally amended to call for the cover members to be "located in said cavity and thereby surrounded by the..." and also by characterizing the force as "within the cavity".

Claim 23 has been amended by changing its dependency from claim 22 to claim 18.

Claim 24 has been amended to by adding the language "said hydraulic cylinder includes" to obviate the rejection on § 112.

Claim 25 is now dependent on claim 23 and the term "bi-rotational" has been inserted twice to obviate the § 112 rejection.

Claim 26 has been amended by inserting the phrase "one end of" and such should obviate the § 112 rejection.

As to claim 27, it has been amended by adding the terms "additionally", "two", "and being in flush relationship therewith and also to more clearly point out the structure and defining passageways as "internal".

Claim 28 has been amended to depend on claim 27 and note the "internal passageways" at line 2, find support in claim 27 and also deleting the word "means" which appeared in line six.

Claim 30 has been amended by additionally calling for "first and second cover members" whereby the gear housing and cover members are surrounded by fluid and "within the cavity, the fluid" having pressure "generated".

It is believed that Applicant has fully addresses the 35 U.S.C. § 112 rejections.

This leaves the art rejections to be addressed hereinafter.

IV. The Rejection on 35 U.S.C. § 102 (b)

Next, the Examiner relied upon 35 U.S.C. § 102 (b) which states,

"A person shall be entitled to a patent unless -
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for the patent in the United States."

Claims 11, 13,17 and 36 are rejected as being anticipated by either Gelin (Fig. 1) or Nakagawa (Fig. 4). Each of the references, according to the Examiner, shows a hydraulic gear pump comprising certain parts as recited therein.

Lastly, claims 18-20 and 31 are rejected, according to the Examiner, as being anticipated by Hartman particularly Fig. 1. The Examiner states that the reference shows an elctro hydraulic linear actuator mechanism, comprising the various elements recited in Applicant's claims.

V. Response to Rejections on 35 U.S.C. § 102 (b)

First we will discuss the rejections on Gelin Patent No. 3, 481,275, beginning at the bottom of page 2, of the Office Action and through three-quarters of the following page; and Nakagawa Patent No. JP 360075783 A and secondly we will discuss the rejection on Hartman Patent No. 2, 457,467, beginning at page 3, of the Office Action, the last quarter of that page continuing onto page 4.

While the **Conclusion** recites certain art references, to wit, Rohde, Carlson and Scanderberg; it also states in the first line that this art is not relied upon therefore, it is not incumbent on the Applicant to argue these references.

As to the reliance upon 35 U.S.C. § 102 (b) attention should be directed to the fact that line 1 of § 102 (b) is a positive statement about entitlement, unless the invention as patented or described...or in public use.

This is the so-called anticipation doctrine, the interpretation of which is included in a number of cases.

Thus,

1) "Anticipation can exist only when single prior art reference teaches same elements as claimed, united in same way to perform identical function. *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc.* (See 179 U.S.P.Q. 322).

2) "In order to anticipate an invention, it is necessary that all elements of the invention or their equivalent be found in one single description or structure, where they do substantially the same work in substantially the same way. *Allied Wheel Products v. Rude* (See 97 U.S.P.Q. 510)

Given the foregoing, the Examiner's reliance upon Gelin as describing Applicant's invention is seen as rather tortured since Gelin is made up of a central body with abutments inside for the gears to fit in and covers bolted to this body on each side (See FIG. 3; bolts (3)).

Gelin further features end plates on each side of the gears, but these do not constitute covers. The end covers are separate and bolted to the body. The plates of Gelin do not constitute end covers (as in Applicant's).

It further appears that Gelin anticipated his pump top be a stand-alone unit similar to conventional gear pumps.

Further, the Gelin pump does not show any arrangement or means for the pump to be bi-rotational or having built in valving as does Applicant's.

It may additionally be noted that Gelin has nothing in his structure which would urge the end covers to the gear housing; rather the pressure plates are urged against abutments in the body while the end covers are bolted to the body.

It is urged that careful examination of the Gelin reference fails to disclose elements or parts or movement thereof which satisfy the cases referred to hereinabove.

Referring now to the Nakawaga reference Patent No. 360075783 and specifically to FIG. 4 thereof, like Gelin, in a manner of speaking, the structure shows the use of plates instead of commonly used bearing blocks. The thickness of the plates are the same as that of the gear housing and will deflect under pressure if they are not pressure balanced.

Furthermore, in Nakawaga the fluid does not surround the pump as in Applicant's including its cover members and end members.

It should be clear that neither of the references Gelin nor Nakagawa can be held as anticipating Applicant's invention as claimed.

Reconsideration of the rejections on either Gelin or Nakagawa is accordingly merited for claims 11, 13, 27 and 36.

Claims 18 – 20 and 31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the Hartman reference, Patent No. 2, 457,467.

First, note the amendments of claim 18 and the identification of the cover member as being pressure clamped.

It is urged that this applies to any claim depending on claim 18 including claims 19, 20, 23, 24, 25 and 31.

The examination of Hartman should reveal the failure of Hartman's disclosure to meet the requirements set forth in the cited cases above.

As to claim 31 it has been amended to recite in 5) a "gearless" means for connecting said electric motor to said drive shaft.

Hartman clearly does not show any gearless pump.

Furthermore, the Hartman reference fails to meet the requirements of the cases cited hereinabove.

The Examiner, in fact, simply quotes a number of elements without showing how the parts interact to meet Applicant's claims.

It is urged that Applicant has made a bona fide effort to meet the Examiner's rejections and certainly to advance the prosecution of this Application.

It is accordingly believed that a favorable reconsideration, of the prior art relied upon and the grounds of rejection, is believed in order and such action is earnestly solicited.

Respectfully submitted,

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CERTIFICATION OF SERVICE

This is to certify that the original AMENDMENT D (Dated November 3, 2004)(P-954-A-2) inclusive of EXHIBIT 1 was Faxed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 at Fax No. (703)308-7765 accompanied by a Certificate of Facsimile Transmission (Form 8-7) on this 3rd day of November, 2004.

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Paul F. Stutz

EXHIBIT 1

CLEAN COPIES

[0061] FIG. 4, as noted in TABLE X, represents a "no rotation" position of the drive shaft (35) and wherein valves (23), (18a), (21a) and (30) are closed. They are closed because with "no rotation" of the driveshaft (35) there is no pressure in either chamber (15a) or (16a) to actuate the pilot pistons (19a) of (25), either of which would open the corresponding valves (18a) or (23) respectively. Likewise valves (30) and (21a) are closed and held closed by the spring as shown because there is no pressure to overcome the resistance of the spring holding the respective valves (30) and (21a) in the closed position. The closed position represents a locked position.

[0064] Referring now to FIG. 6 and TABLE X, the drive shaft (35) is rotating in a clockwise (cw) direction of rotation, which is the reverse of the counterclockwise (ccw) direction shown in FIG. 5. This change in direction of rotation results in a pressure being immediately urged against pilot piston (25), which moves downwardly against spring opposed ball (23), thereby opening the associated valve (23) and in addition valves (30) and (20a) as shown. The continued clockwise (cw) rotation of the drive shaft (35) also closes ball valves (28, 18a, 21a). And as a consequence there is a change of pressure whereby the pressure is greater in the fluid flow into upper chamber (16a) causing the fluid to flow out conduit (7a) upwardly into the actuator (3a) to the left of piston (4b) causing piston (4b) to move to the right into the retract position. This in turn moves liquid out of the opposite end of the actuator (3a) down conduit (6a) into the lower chamber (15a) and through valve (23) to the reservoir (13a) thereby initiating a reversal to the FIG. 5 conditions by reason of changing the rotation of pump (2a) from clockwise (cw) to counterclockwise (ccw).